

806 KAR 12:080. Replacement of life insurance and annuity contracts.

RELATES TO: KRS 304.12-010, 304.12-030

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Executive Director of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.12-030 establishes minimum standards of conduct to be observed in replacement or proposed replacement of life insurance policies and annuity contracts. This administrative regulation sets forth the procedures to be followed in the replacement or proposed replacement of life insurance policies and annuity contracts.

Section 1. Definitions. (1) "Conservation" means any attempt by the existing insurer or its agent to continue existing life insurance in force after the existing insurer has received a copy of the "Office Form A, Important Notice: Replacement of Life Insurance or Annuities" as required by Section 3(2) of this administrative regulation from a replacing insurer. A conservation effort does not include routine administrative procedures.

(2) "Direct-response solicitation" is defined in KRS 304.12-030(1)(f).

(3) "Executive director" is defined by KRS 304.1-050(1).

(4) "Existing life insurance" is defined in KRS 304.12-030(1)(d).

(5) "Existing insurer" is defined in KRS 304.12-030(1)(b).

(6) "Financed purchase" is defined in KRS 304.12-030(1)(e).

(7) "Illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years.

(8) "Office" is defined by KRS 304.1-050(2).

(9) "Policy summary" means:

(a) For policies or contracts other than universal life policies, a written statement regarding a policy or contract which shall contain, to the extent applicable, the following information:

1. The current death benefit;
2. The annual contract premium;
3. The current cash surrender value;
4. The current dividend; and
5. The amount of outstanding loans; or

(b) For universal life policies, a written statement that contains, at a minimum, the following information:

1. The beginning and end dates of the current reporting period;
2. The policy value at the end of the previous reporting period and at the end of the current reporting period;
3. The total amounts that have been credited or debited to the policy value during the current reporting period, identifying each by type;
4. The current death benefit at the end of the current reporting period on each life covered by the policy;
5. The net cash surrender value of the policy as of the end of the current reporting period; and
6. The amount of outstanding loans, if any, as of the end of the current reporting period.

(10) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933, 15 U.S.C. 77a et seq.

(11) "Replacement" is defined in KRS 304.12-030(1)(a).

(12) "Replacing insurer" is defined in KRS 304.12-030(1)(c).

(13) "Sales material" means a sales illustration and any other written, printed, or electronically-presented information created, completed, or provided by the company or agent and used in the presentation to the policy or contract owner related to the policy or contract purchased.

(14) "Universal life insurance policy" means a life insurance policy where separately identified interest credits, other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts, and mortality and expense charges are made to the policy. A universal life insurance policy may provide for other credits and charges, such as charges for the cost of benefits provided by the rider.

Section 2. Exemptions. This administrative regulation shall not apply to the policies or contracts set forth in KRS 304.12-030(3).

Section 3. Duties of Agents. (1) Each agent shall submit to the insurer with, or as part of the application, a statement signed by both the applicant and the agent as to whether the applicant has existing policies or contracts. If the applicant indicates that he or she does not have existing policies or contracts, the agent's duties with respect to replacement are complete.

(2) If the applicant indicates that he or she has existing policies or contracts, the agent shall present and read to the applicant, not later than at the time of taking the application "Office Form A, Important Notice: Replacement of Life Insurance or Annuities," or a substantially-similar form approved by the executive director. Approval shall not be required if amendments to the notice are limited to the omission of references not applicable to the product being sold or replaced. The notice shall be:

(a) Signed by both the applicant and the agent attesting that:

1. The notice has been read aloud by the agent; or
2. The applicant did not wish the notice to be read aloud, in which case the agent need not have read the notice aloud; and

(b) Left with the applicant.

(3) The notice shall list all life insurance policies or annuity contracts proposed to be replaced, and properly identified by:

(a) Name of insurer;

(b) The insured or annuitant; and

(c) Policy or contract number, if available.

(4) The notice shall include a statement as to whether each policy or contract will be replaced or whether a policy or contract will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification shall be listed.

(5) In connection with a replacement transaction, the agent shall leave with the applicant when an application for a new policy or contract is completed, the original or a copy of all sales material. Electronically-presented sales material shall be provided to the policy or contract owner in printed form no later than when the policy or contract is delivered.

(6) Except as provided in Section 5(3), in connection with a replacement transaction, the agent shall submit to the insurer to which an application for a policy or contract is presented:

(a) A copy of each document required by this section;

(b) A statement identifying any preprinted or electronically-presented company approved sales materials used; and

(c) Copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

Section 4. Duties of Insurers That Use Agents. Insurers that use agents shall:

(1) Maintain a system of supervision and control to ensure compliance with the requirements of this administrative regulation that shall include at least the following:

(a) Inform its agents of the requirements of this administrative regulation and KRS 304.12-030, and incorporate the requirements of this administrative regulation into all relevant agent training manuals prepared by the insurer;

(b) Provide to each agent a written statement of the insurer's position with respect to the acceptability of replacements providing guidance to its agents as to the appropriateness of these transactions;

(c) A system to review the appropriateness of each replacement transaction that the agent does not indicate is in accord with paragraph (b) of this subsection;

(d) Procedures to confirm that the requirements of this administrative regulation have been met; and

(e) Procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or agent.

(2) Have the capacity to monitor each agent's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make the records available to the Office of Insurance. The capacity to monitor shall include the ability to produce records for each agent's:

(a) Life replacements, including financed purchases, as a percentage of the agent's total annual sales for life insurance;

(b) Number of lapses of policies by the agent as a percentage of the agent's total annual sales for life insurance.

(c) Annuity contract replacements as a percentage of the agent's total annual annuity contract sales;

(d) Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the insurer's monitoring system as required by subsection (1)(e) of this section; and

(e) Replacements, indexed by replacing agent and existing insurer.

(3) Require with or as a part of each application for life insurance or an annuity, a signed statement by both the applicant and the agent as to whether the applicant has existing policies or contracts;

(4) Require with each application for life insurance or an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in "Office Form A, Important Notice: Replacement of Life Insurance or Annuities;"

(5) If the applicant has existing policies or contracts, be able to produce copies of any sales material required by Section 3(6) of this administrative regulation, the basic illustration, and any supplemental illustrations related to the specific policy or contract that is purchased, and the agent's and applicant's signed statements with respect to financing and replacement for at least five (5) years after the termination or expiration of the proposed policy or contract;

(6) Ascertain that the sales material and illustrations required by Section 3(6) of this administrative regulation meet the requirements of this administrative regulation and are complete and accurate for the proposed policy or contract;

(7) If an application does not meet the requirements of this administrative regulation, notify the agent and applicant and fulfill the outstanding requirements; and

(8) Maintain records in paper, photograph, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.

Section 5. Duties of Replacing Insurers that Use Agents. (1) If a replacement is involved in the transaction, the replacing insurer shall:

(a) Verify that the required forms are received and are in compliance with this administrative regulation;

(b) Notify any other existing insurer that may be affected by the proposed replacement within five (5) business days of receipt of a completed application indicating replacement of when the replacement is identified, if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five (5) business days of a request from an existing insurer;

(c) Be able to produce copies of the notification regarding replacement required in Section 3(2) of this administrative regulation, indexed by agent, for at least five (5) years or until the next regular examination by the insurance department of an insurer's state of domicile, whichever is later; and

(d) Provide to the policy or contract owner notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, if a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under the policy or contract.

(e) Allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases, the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(2) If an insurer prohibits the use of sales material other than that approved by the insurer, as an alternative to the requirements made of an insurer pursuant to Section 3(6) of this administrative regulation, the insurer:

(a) May require with each application a statement signed by the agent that:

1. Represents that the agent used only company-approved sales material; and

2. States that copies of all sales material were left with the applicant in accordance with Section 3(5) of this administrative regulation;

(b) May within ten (10) days of the issuance of the policy or contract:

1. Notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the agent has represented that copies of all sales material have been left with the applicant in accordance with Section 3(5) of this administrative regulation;

2. Provide the applicant with a toll-free number to contact insurer personnel involved in the compliance function if this is not the case; and

3. Stress the importance of retaining copies of the sales material for future reference; and

(c) Shall be able to produce a copy of the letter or other verification in the policy file for at least five (5) years after the termination or expiration of the policy or contract.

Section 6. Duties of the Existing Insurer. Where a replacement is involved in the transaction, the existing insurer shall:

(1) Retain and be able to produce all replacement notifications received, indexed by a replacing insurer, for at least five (5) years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later.

(2) Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including:

(a) An in-force illustration, if available; or

(b) A policy summary if an in-force illustration cannot be produced within five (5) business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be

provided within five (5) business days of receipt of the request from the policy or contract owner.

(3) Upon receipt of a request to borrow, surrender, or withdraw any policy values, send a notice advising the policy owner that the release of policy values may affect the guaranteed elements, nonguaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policy owner. In the case of consecutive automatic premium loans, the insurer shall send the notice at the time of the first loan.

Section 7. Duties of Insurer with Respect to Direct-response Solicitation. (1) If an application is initiated as a result of a direct-response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue, or change an existing policy or contract. If the applicant indicates a replacement or change is not intended, or if the applicant fails to respond to the statement, the insurer shall send to the applicant with the policy or contract, a notice regarding replacement in "Office Form B, Notice Regarding Replacing Your Life Insurance Policy or Annuity" or other substantially-similar form approved by the executive director.

(2) If the insurer has proposed the replacement, or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(a) Provide to applicants or prospective applicants with the policy or contract a notice, as described in "Office Form C, Important Notice: Replacement of Life Insurance or Annuities," or other substantially-similar form approved by the executive director. In these instances, the insurer may delete the references to the agent, including the agent's signature, and references not applicable to the product being sold or replaced, without having to obtain approval of the form from the executive director. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and

(b) Comply with the requirements of Section 5(1)(b), if the applicant furnishes the names of the existing insurers, and the requirements of Section 5(1)(c), (d), and 5(2).

Section 8. Violations and Penalties. (1) Any failure to comply with this administrative regulation shall be considered a violation of KRS 304.12-010.

(2) Policy and contract owner have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention. Patterns of this action by policy or contract owners of the same agent shall be deemed prima facie evidence of the agent's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the agent's intent to violate this administrative regulation.

(3) If it is determined that the requirements of this administrative regulation have not been met, the replacing insurer shall provide to the policy owner an in-force illustration, if available, or policy summary for the replacement policy or available disclosure document for the replacement contract and the appropriate notice regarding replacements in "Office Form A, Important Notice: Replacement of Life Insurance or Annuities."

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Office Form A, Important Notice: Replacement of Life Insurance or Annuities", April 2005;

(b) "Office Form b, Notice Regarding Replacing Your Life Insurance Policy Or Annuity", April 2005; and

(c) "Office Form C, Important Notice: Replacement of Life Insurance or Annuities", April 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Office of Insurance Internet Web site at <http://doi.ppr.ky.gov>. (9 Ky.R. 655; Am. 789; 1004; eff. 2-2-83; 1236; eff. 6-1-83; 32 Ky.R. 327; 692; 885; eff. 12-2-2005; Crt eff. 2-26-2020.)